

Subject: SWP No.2322/2013-titled Sofia Paul and others V/S State of J&K & Others.

Reference:- Order and judgment dated:- 18.12.2017 passed by the Hon'ble High Court, J&K Srinagar in the above titled matter.

O R D E R

Whereas, One Sofia Paul D/O Noor Mohammad Paul R/O Safa Kadal, Srinagar alongwith two others filed the above titled writ petition before the Hon'ble High Court, J&K Srinagar seeking therein quashment of promotion of the private respondents as Head Assistants and accordingly claimed consideration of their promotions to the post of Head Assistants from the date the private respondents have been granted promotions.

Whereas, the Hon'ble High Court, J&K Srinagar was pleased to pass interim directions vide order dated:- 27.11.2013, where under the respondents were directed to consider the claim of the petitioners for promotion to the post of Head Assistant on the analogy of respondent no. 8 with the further directions that employees in the cadre of Senior Assistants shall be deputed to undergo Secretariat Assistant Training Course strictly in accordance with seniority. Besides, the Hon'ble High Court directed that the promotion of private respondents shall remain subject to outcome of the writ petition.

Whereas, in pursuance of the directions passed by the Hon'ble High Court J&K Srinagar in terms of order dated:-27.11.2013, the claim of the petitioners was accorded consideration on the touch stone of rules occupying the field and was accordingly disallowed after having been found without devoid of merit / rules, which has resulting in issuance of consideration order issued by this office vide No. 149/NG of 2014 dated:-05.05.2014.

Whereas, while passing the aforesaid consideration order by this Directorate, it was held that the future deputation of Senior Assistants for undergoing Secretariat Assistant Training Course shall be based on the basis of strict seniority/ turn.

Whereas, the Hon'ble High Court, J&K Srinagar disposed of the above titled writ petition vide order and Judgment dated:-18.12.2017 with the following directions, the operative portion of which reads as under:-

“....In view of the aforesaid statement made by the learned counsel for the petitioners, the instant writ petition is disposed of with a direction to the respondents to accord consideration to the claim of the petitioners on the same analogy as has been followed in the case of the private respondent, Ab.Rashid Bhat, as reflected in the writ petition under law and the rules governing the subject within a period of four weeks from the date the certified copy of this orders is made available to the respondents.”

Whereas, the claim of the petitioners was again examined in this office in the light of Hon'ble High Court Orders passed in the above titled writ petition from time to time and the same was found not permissible

under the standing rules governing the field as none of the petitioners were found eligible for their promotion to the post of Head Assistants in the department. Besides, the analogy of private respondent no. 8, pressed in service by the petitioners was found in contravention to the existing rules as well as standing Government instructions.

Whereas, this office after examining the case of the petitioners in detail, passed a detailed consideration order vide No. 388/NG of 2018 dated:-10.05.2018 whereby the claim of the petitioners was turned down as the same was found not admissible under rules.

Whereas, the petitioners No. 1 and 2 in the above titled writ petition have filed a contempt petition bearing No. 143/2018 in SWP No:-2322/2013- titled Sofia Paul and another vs. Mr. Pawan Kotwal and another seeking therein initiation of contempt proceedings against the respondents (alleged contemnors) for non-implementation of orders passed by the Hon'ble High Court, Srinagar vide order and judgment dated:-18.12.2017. In response, the Hon'ble Court has directed to file statement of facts / compliance report in pursuance of the said judgment.

Whereas, the claim of the petitioners was again discussed in thread bear on the basis of relevant records coupled with the standing rules/ norms and it was observed that the petitioners No.1 namely Mrt. Sofia Paul, Senior Assistant is yet to undergo Secretariat Assistant Training Course and will be considered for the same on the basis of her seniority / turn.

Whereas, it was further surfaced that during the pendency of the above titled writ petition in the Hon'ble Court, the petitioner No.2 & 3 namely Syed Javeed Ahmad and Mrt. Shaheena Noor, Senior Assistants were nominated for undergoing Secretariat Assistant Training Course on their own turn/seniority in the Open Merit and RBA (Reserved) category respectively. However, the petitioner No.2 had on some personal reasons refused to undergo aforesaid training course, while as, the petitioner no. 3 has successfully completed the said training course and will be considered for promotion to the post of Head Assistant at appropriate time after considering all other eligible Senior Assistants.

Whereas, it has been also observed that the petitioners No.1 & 2 (Contemnors) cannot claim the analogy of respondent No.8 namely Shri Abdul Rashid Bhat for the reason that the said official was deputed to undergo Secretariat Assistant Training Course (SATC) under RBA (Reserved) category at relevant point of time, while as, both the petitioners falls under Open Merit (Category). The petitioner No.3 has not chosen to file any contempt proceedings against the respondents for the reason that her grievance stands addressed by the respondent Directorate after she was found eligible for SATC under Reserved category.

Now, therefore, in view of position given hereinabove, the claim of the petitioners was examined / considered in pursuance of the judgment dated 28.12.2017 passed by the Hon'ble High Court J&K Srinagar in the above titled writ petition and the same has been found premature at this stage besides the analogy of private respondent no. 8 pressed in service by the petitioners is not permissible under rules governing the field and is accordingly rejected / disallowed.

Sd/-
Director Health Services
Kashmir

No;-Est-5/NG/Legal/SGR-756/ 3386-90
Copy to ;-

Dated: -15/11/2018

1. Principal Secretary to Government, H&ME Department, J&K Government, Srinagar for information.
2. Mr.Shah Aamir, learned Additional Advocate General, J&K High Court, Srinagar for information with the request to kindly get the compliance report filed in the Hon'ble Court as directed well before the next date of hearing of the contempt petition.
3. Chief Medical Officer, Srinagar for information.
4. Medical Superintendent, JLNH Hospital, Srinagar for information.
- 5-7. Mr./ Mrt. _____ S,D,W/O _____ R/o:- _____ for information.

8- I/c website Barazulla Sgr

Dy. Director Health Services
(HQ) Kashmir